

TEXAS FMNP PROGRAM

SUBJECT: **APPEAL PROCEDURES** POLICY NO.: **FM: 01.6**

EFFECTIVE DATE: **May 1, 1994** REPLACES POLICY DATED: N/A

REF: Public Law 102-314 Federal Regulations, 7 CFR Part 248.16

POLICY

A farmers' market association or farmer adversely affected by a State Agency (SA) action affecting participation has the right to appeal, with the exception of expiration/nonrenewal of a Farmers' Market Agreement.

PURPOSE

To insure that each farmers' market association and farmer has the opportunity to appeal an adverse action taken by the SA.

PROCEDURE

- I. The SA shall provide written notice of disqualification at least fifteen (15) days prior to the effective date of disqualification. The SA shall provide the farmers' market or farmer to be affected with the cause(s) for, the effective date of, and the option to appeal the adverse action within fifteen (15) days of receipt of the notification.
- II. To appeal the action, the affected market or farmer shall provide the SA with a written request for a hearing within fifteen (15) days of receipt of the notification. The request shall, at a minimum, describe the action that is being appealed.
 - A. The adverse action affecting a participating market or farmer shall not be postponed until a hearing decision is reached if the cause was for redeeming Farmers' Market coupons for cash, and/or non-food items. If the cause was not cash and/or non-food items, the adverse action affecting a participating market or farmer shall be postponed during the term of the FMNP Agreement until a hearing decision is reached.
 - B. Appealing an adverse action does not relieve a farmers' market or a farmer permitted to continue in the program while the appeal is in process, from the responsibility of continued compliance with the terms of the written agreement with the SA.

- III. In response to the request for a hearing, the SA shall provide the farmers' market or farmer:
 - A. At least ten (10) days advance notice of the time and the place for the hearing.
 - B. An opportunity to reschedule the hearing one time.
 - C. An opportunity to review all written case records prior to the hearing.
 - D. The opportunity to present their case with witnesses and counsel if desired.
 - E. The opportunity to confront and cross-examine adverse witnesses.
 - F. An impartial decision maker who will prepare a written decision based solely on the evidence presented at the hearing, and the statutory and regulatory provisions governing the program.
 - G. Written notification of the decision.
- IV. In the event a hearing decision is reached in favor of the SA, the adverse action may be imposed in part or in whole during subsequent FMNP Agreements.
- V. The SA is not responsible for losses incurred by the farmers' market or farmer as a result of disqualification and/or denial of application to participate.
- VI. If a decision is rendered against the farmers' market or farmer, and the appellant expresses an interest in pursuing a higher review of the decision, the SA shall explain the right to pursue judicial review of the decision.